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Supreme Court of the United States

OCTOBER TERM, 1950.

No. 449.

JOHN MICHAEL PETRONE,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

REPLY BRIEF OF PETITIONER.

We respectfully submit that the necessity for replying to the government's brief in opposition to the granting of a writ of certiorari is impelled by the incorrect statement of fact on page 3, *viz:*

> "The agent picked up the notes and asked petitioner 'What is this?'. Petitioner said, 'I don't know what it is', but when asked if it was counterfeit, he replied affirmatively and then inquired 'Cannot we do something about this'."

Petitioner at no time replied affirmatively that he knew the money was counterfeit (R. page 7).

The government relies on *U. S.* vs. *Picarelli,* 148 Fed. (2) 997, 2 C. C. A. and *Christian* vs. *U. S.,* 8 Fed. (2) 722, as expounding the principle of "consciousness of guilt", from alleged admissions made by the accused.

The facts in *Picarelli* vs. *U. S., supra,* are not similar to those at bar. Picarelli, with another was charged with the unlawful possession of rationing coupons issued under the Second War Powers Act. It was conceded that the coupons were not lawfully issued to him or for anyone for whom he was acting as agent and further that they were discovered in his car. His conversation with the arresting officers "Listen, Officer, can't we talk this thing over?", coupled with his unexplained possession of the coupons, did create a question for the jury to determine his guilt or innocence. The rationing regulations prohibited the possession, use or transfer of coupons not lawfully issued to the person possessing them. An innocent explanation would be called for.

But, as to petitioner, the unlawful possession of counterfeit money is made a crime by statute only when that possession is for a fraudulent purpose. Absent proof fraudulent intent the statute is not violated. Conjecture, suspicion, surmise or supposition are not the legal bases for establishing proof of guilt, *Murphy* vs. *U. S.*, 18 Fed. (2) 509, 512 (8 C. C. A.); *Girgenti* vs. *U. S.*, 81 Fed. (2) 741 (3 C. C. A.); *De Vito* vs. *U. S.*, 68 Fed. (2) 837 (2 C. C. A.); *Farmer* vs. *U. S.*, 297 U. S. 711.

Christian vs. *U. S., supra,* has no application here. Christian offered to plead guilty to charges of violating the Prohibition Act in exchange for the imposition of fines instead of jail sentences. This was irrefutably an admission of absolute guilt. Such was not, ever, the position of petitioner.

The remarks by petitioner to the agents, his attitude, excitement and the fact that the alleged counterfeit money

was in plain open view on top of a dresser do not connote facts establishing "a consciousness of guilt." His alleged remark to the agent "Can't we do something about this" is given a sinister inference, when as a matter of fact, innocent inferences could equally and consistently be given to such a remark. Petitioner's co-operativeness in consenting to a search of his entire home, is certainly inconsistent with any "consciousness of guilt", relating to the presence of counterfeit money in his home and knowledge of its spurious quality, *or intent to defraud.*

The government's brief merely states that there are no conflicts of decisions of the various appellate courts with that at bar, but does not cite any authorities to sustain this argument. Our brief clearly points out the conflicts involved.

Conclusion.

The questions presented are of great importance in the uniform administration of justice in the criminal courts which should be finally settled and determined by this Honorable Court; and a writ of certiorari should be granted.

Respectfully submitted,

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